

**Assembly Bill No. 453**

\_\_\_\_\_

Passed the Assembly     September 9, 2003

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate     September 4, 2003

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

└

## CHAPTER \_\_\_\_\_

An act to add Section 5110 to the Public Contract Code, relating to public contracts.

## LEGISLATIVE COUNSEL'S DIGEST

AB 453, Yee. Public works contracts: compensation of contractors.

Existing law sets forth the procedures governing the bidding, awarding, and payment of public works contracts by public entities, and the relief due bidders and contractors under those contracts.

This bill would provide that when a project for the construction, alteration, repair, or improvement of any structure, building, or road, or other improvement of any kind is competitively bid and any intended or actual award of the contract is challenged, the contract may be entered into pending final decision on the challenge. If the contract is later determined to be invalid due to a defect or defects in the competitive bidding process caused solely by the public entity, this bill would entitle the contractor who entered into the contract with the public entity to be paid the reasonable cost, specifically excluding profit, of the labor, equipment, materials, and services furnished by the contractor prior to the date of the determination, subject to specified conditions.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature in enacting this act that a contractor subject to its provisions may be paid the reasonable cost, specifically excluding profit, of labor, equipment, materials, and services that were rendered under a contract that was competitively bid, but subsequently determined to be invalid, in order to avoid unjust enrichment of the public entity and an unlawful taking of the contractor's property.

SEC. 2. Section 5110 is added to the Public Contract Code, to read:

5110. (a) When a project for the construction, alteration, repair, or improvement of any structure, building, or road, or other



improvement of any kind is competitively bid and any intended or actual award of the contract is challenged, the contract may be entered into pending final decision of the challenge, subject to the requirements of this section. If the contract is later determined to be invalid due to a defect or defects in the competitive bidding process caused solely by the public entity, the contractor who entered into the contract with the public entity shall be entitled to be paid the reasonable cost, specifically excluding profit, of the labor, equipment, materials, and services furnished by the contractor prior to the date of the determination that the contract is invalid if all of the following conditions are met:

(1) The contractor proceeded with construction, alteration, repair, or improvement based upon a good faith belief that the contract was valid.

(2) The public entity has reasonably determined that the work performed is satisfactory.

(3) Contractor fraud did not occur in the obtaining or performance of the contract.

(4) The contract does not otherwise violate statutory or constitutional limitations.

(b) In no event shall payment to the contractor pursuant to this section exceed either of the following:

(1) The contractor's costs as included in its bid plus the cost of any approved change orders.

(2) The amount of the contract less profit at the point in time the contract is determined to be invalid.

(c) Notwithstanding subdivision (a), this section shall not affect any protest and legal proceedings, whether contractual, administrative, or judicial, to challenge the award of the public works contract and enforce competitive bidding laws, nor affect any rights under Section 337.1 or 337.15 of the Code of Civil Procedure.



Approved \_\_\_\_\_, 2003

\_\_\_\_\_  
*Governor*

